

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

PETER J. VOGGENTHALER, *et al.*,

Plaintiffs,

vs.

MARYLAND SQUARE, LLC., *et al.*,

Defendants

Case No. 2:08-cv-01618-RCJ-GWF

**ORDER**

Motion to Substitute Party (#1016)

This matter is before the Court on the Defendants' Motion to Substitute Party (#1016), filed on January 13, 2014. Defendants filed a Notice of Non-Opposition (#1022) on January 30, 2014. No Opposition was filed in this matter.

**BACKGROUND**

Plaintiffs brought this action against Defendants under the Federal Resource Conservation and Recovery Act ("RCRA") 42 U.S.C. § 6972(a)(1)(B) on November 19, 2008. On October 15, 2013, Defendants filed a Notice of Suggestion of the Death of Defendant Melvin Shapiro (#1009), indicating Defendant passed away on August 26, 2013. On December 27, 2013, the Probate Court of the Eighth Judicial District Court, Clark County, Nevada entered an Order appointing Patricia Leibovici as Special Administrator of the Estate of Melvin Shapiro. *See Doc. #1016*. Defense Counsel submitted Letters of Administration for Patricia Leibovici, and moves this Court for an Order substituting Ms. Leibovici, solely in her capacity as Special Administrator for the Estate of Melvin Shapiro, as a party to this action. *Id.*

**DISCUSSION**

Fed. R. Civ. P. Rule 25(a)(1), allows the court to order substitution of a party if a party dies and the claim is not extinguished. Whether a federal action survives the death of a party is governed by federal law and is determined by "whether the statute under which the plaintiff is claiming is

1 penal or remedial in character.” *Cook v. Hairston*, 948 F.2d 1288 (6<sup>th</sup> Cir. 1991). Claims pursuant  
2 to remedial statutes survive the death of a party while an action for a penalty does not. *Id.* To  
3 establish whether a statute is penal or remedial in nature a court looks to: 1) whether the purpose of  
4 the statute was to redress individual wrongs or more general wrongs to the public; 2) whether  
5 recovery under the statute runs to the harmed individual or the public; and 3) whether the recovery  
6 authorized by the statute is wholly disproportionate to the harm suffered. *See Murphy v. Household*  
7 *Finance Corp.*, 560 F.2d 206 (6<sup>th</sup> Cir. 1977). The RCRA was designed to protect human health and  
8 the environment by regulating “the generation, transport, and disposal of hazardous wastes.” *See* 42  
9 U.S.C. § 6902(a). Additionally, relief under the RCRA is limited to a mandatory or prohibitory  
10 injunction. *See Meghrig v. KFC Western, Inc.*, 516 U.S. 479 (1996). Therefore, the RCRA is a  
11 remedial statute and Plaintiff’s claim survives Defendant’s death.

12 Furthermore, no opposition has been filed to this motion. Pursuant to Local Rule 7-2(d),  
13 failure of an opposing party to respond to a filed motion “constitute[s] a consent to the granting of  
14 the motion.” Accordingly,

15 **IT IS ORDERED** that the Motion for Substitution of Party (#1016) is GRANTED.  
16 DATED this 14<sup>th</sup> day of March, 2014.

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19 GEORGE FOLEY, JR.  
United States Magistrate Judge